

IR 90-218

**NORTH ATLANTIC ENERGY SERVICES CORPORATION**

**Motion for Protective Order**

**Order Approving Request for Protective Order**

**O R D E R    N O.    23,485**

**May 22, 2000**

On February 17, 2000, North Atlantic Energy Services Corporation (North Atlantic or the Company) filed a Motion for Protective Order with respect to two reports it provides under this docket for the Seabrook Nuclear Station: the Seabrook Station Operations Report and the Seabrook Station Budget Status Report (the Reports).

North Atlantic requests confidential treatment of these reports now because of the impending move to a competitive market for generation resources in the electricity industry. The Company avers that the information and data contained in the two Reports contain commercially sensitive information which may, if continued to be publicly disclosed, compromise Seabrook Station's ability to compete in a restructured environment. North Atlantic indicates that the Seabrook Station Operations Report describes in some detail operations at the plant, strategic planning, and major projects and their schedules for completion. The Seabrook Station Budget Status Report contains yearly budget analysis

and variance analyses for several different categories such as operating expenses and capital projects. North Atlantic believes that continued disclosure of these Reports may harm the auction of the ownership interests in the plant as well as the sale of power generated by the plant prior to divestiture. The Company believes that information available to potential bidders ought to be disclosed only through a controlled due diligence process, and that non-disclosure of the Reports may help the Company maximize the value of the plant in the future by maintaining the confidentiality and integrity of the evaluation and bidding process. The Company further maintains that Public Service Company of New Hampshire's (PSNH) customers will benefit from non-disclosure since those customers are ultimately responsible for paying the difference between North Atlantic's investment in the plant and the price North Atlantic may be able to obtain in a transfer of that investment to another entity. This will assist in the mitigation of stranded costs to PSNH ratepayers.

In addition, North Atlantic indicates that other Joint Owners of Seabrook Station have experienced or will soon undergo restructuring such that their ownership interests in Seabrook Station will no longer be used to provide traditional bundled electric service. The output of their ownership

interests before divestiture will also need to compete with other generation sources in the competitive wholesale power market. The non-disclosure of the reports in question will allow those Joint Owners to be able to bid the station's output into the New England dispatch to maximize the value of that output without potential purchasers of the output knowing what costs Seabrook Station plans to incur in the year, what costs it has incurred to date, what activities the Station is currently carrying out and the operations planned for the future. This maximizes benefits to customers since they are ultimately responsible for paying the difference between the cost of producing the power and the cost which will be paid by the pool or by another purchaser of Seabrook's output.

Pursuant to RSA 91-A, the Right-to-Know Law, all government meetings and records shall be open and available to the public unless they fall within a narrow set of exemptions set forth at RSA 91-A:5. See generally, Union Leader Corporation v. New Hampshire Housing Authority, 142 N.H. 540 (1997). RSA 91-A:5,IV provides that records pertaining to "confidential, commercial, or financial information" are exempt from the general provisions of the Right-to-Know Law that would otherwise subject such information to disclosure. We believe the information contained in the Reports falls

within the definition of commercial or financial information addressed by RSA 91-A:5, IV.

The New Hampshire Supreme Court has held, however, that information that falls into one of these categories is not, per se, exempt from disclosure. Union Leader Corp., 142 N.H. 540, 553. Rather, the Court has held that the negative impact of disclosure of the "commercial or financial interest must be balanced against the public's interest in disclosure." Id.; Accord, Re Public Service Company of New Hampshire, Order No. 23,090 (December 21, 1998); Re New England Telephone Company (Auditel), 80 NHPUC 437 (1995); Re Bell Atlantic, Order No. 22,851 (February 17, 1998); Re EnergyNorth Natural Gas, Inc., Order No. 22,859 (February 24, 1998).

Applying this balancing test to the case at hand, we conclude that North Atlantic has made a prima facie showing that the potential competitive harm to North Atlantic, the other Joint Owners as well as PSNH ratepayers through the Seabrook Power Contract outweighs the public's interest in disclosure. Thus, the motion will be granted subject to further review upon a request by the public to review the material pursuant to RSA 91-A.

**Based upon the foregoing, it is hereby**

**ORDERED**, that North Atlantic Energy Services

Corporation's Motion for Protective Order is GRANTED; and it is

**FURTHER ORDERED,** that this Order is subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of May, 2000.

---

Douglas L. Patch  
Chairman

---

Susan S. Geiger  
Commissioner

---

Nancy Brockway  
Commissioner

Attested by:

---

Claire D. DiCicco  
Assistant Secretary